

THE EFFECTIVE DATE OF THIS ORDINANCE IS AUGUST 15, 2008

ORDINANCE NO. 08-21-497

**Re: An Ordinance to Amend the Frederick County Zoning Ordinance
To Apply Waterbody Buffer Requirements Countywide**

RECITALS

WHEREAS, on July 10, 2007, the Board of County Commissioners of Frederick County (BOCC) adopted Ordinance No. 07-24-464, which defined the Linganore Watershed Protection Area and established waterbody setbacks for development in this area, , and

WHEREAS, at a work session on November 1, 2007, the BOCC directed Staff to come back with a "draft proposal for extending the water protection ordinance countywide," and

WHEREAS, on April 10, 2008, the Staff presented a draft proposal to amend §§1-19-4, 1-19-327 and 1-19-333 to apply waterbody buffer requirements countywide. During this worksession, the BOCC requested additional information plus made several changes to the proposed Countywide stream buffer ordinance, and

WHEREAS, at its May 8, 2008 meeting, the Staff presented a revised text amendment and the BOCC approved taking it to public hearing, and

WHEREAS, the Frederick County Planning Commission held a public hearing on this Ordinance on June 18, 2008 and recommended approval of this Ordinance, with certain changes and clarifications, and

WHEREAS, the BOCC held a public hearing on this Ordinance on August 5, 2008, during which the public had an opportunity to comment.

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND that the following revisions to the Frederick County Code are hereby adopted:

§1-19-4. DEFINITIONS.

WATERBODY. Intermittent and perennial streams, RIVERS, lakes and ponds, BUT excluding stormwater management ponds. ~~in the Linganore Watershed Protection Area. See §1-19-333.~~

§1-19-327. ACTIVITIES WITHIN FLOODPLAIN DISTRICT.

(A) [Unchanged]

(B) *Land development*

(1) [Unchanged]

(2) [Unchanged]

(3) A minimum setback of 25 feet shall be provided from all ~~FEMA~~Ffloodplain DISTRICT boundaries, EXCEPT AS OTHERWISE APPROVED THROUGH THE MITIGATION PROCESS DESCRIBED IN § 1-19-327(B)(7), or A MINIMUM SETBACK OF 50 feet SHALL BE PROVIDED from the bank of any perennial or intermittent stream, whichever is greater. ALL SETBACK AREAS,~~and~~ shall be maintained or planted with natural vegetation.

§1-19-333. WATERBODY BUFFER REQUIREMENTS ~~ADDITIONAL REQUIREMENTS IN THE LINGANORE WATERSHED PROTECTION AREA.~~

A PARCEL, LOT, OR TRACT OF LAND SUBMITTED TO FREDERICK COUNTY FOR SUBDIVISION OR RESUBDIVISION REVIEW AND APPROVAL SHALL BE SUBJECT TO THE FOLLOWING WATERBODY BUFFER REQUIREMENTS. THE REQUIREMENTS IN THIS SECTION SHALL NOT APPLY TO EXISTING STRUCTURES.

(A) ~~The following waterbody buffer requirements shall apply to lots and parcels of record created by subdivision or resubdivision of land in the Linganore Watershed Protection Area after July 20, 2007. The requirements in this section shall not apply to existing structures. To meet the requirements of this section, applicants shall use Best Available Data.~~ ALL SUBDIVISION PLANS SHALL HAVE WATERBODY BUFFERS CLEARLY SHOWN AND CERTIFIED BY A PROFESSIONAL ENGINEER, REGISTERED PROFESSIONAL LAND SURVEYOR, OR REGISTERED PROPERTY LINE SURVEYOR. TO MEET THE REQUIREMENTS OF THIS SECTION, APPLICANTS SHALL USE BEST AVAILABLE DATA.

(B) ALL WATERBODY BUFFER AREAS SHALL BE MAINTAINED IN A NATURAL VEGETATIVE STATE UNLESS OTHERWISE UTILIZED FOR

REFORESTATION OR AFFORESTATION TO SATISFY FOREST RESOURCE ORDINANCE OBLIGATIONS OR FOR ENVIRONMENTAL ENHANCEMENT PROJECTS ADMINISTERED OR APPROVED BY FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCIES.

~~(B)~~(C) Waterbody buffer widths shall be determined in accordance with the requirements described below AND SHALL APPLY TO EACH SIDE OF A WATERBODY. As used herein, the term "moderate slope" means a slope with a gradient of 15% to less than 25%; and the term "steep slope" means a slope with a gradient of 25% or greater.

(1) The waterbody buffer width shall be derived by calculating the gradient of the slope within a 175-foot cross-section on EACH~~both~~ sides of a waterbody, drawn perpendicular to the direction of waterbody flow. Cross-sectional measurements shall be taken every 50 feet along the bank(s) of the waterbody.

(2) The minimum waterbody buffer shall be 100 feet.

(3) Except as provided in subsection (4) below, if 60% or more of the 175-foot cross-section includes moderate (15% to <25%) slopes, then the waterbody buffer shall be increased to 150 feet FOR THAT SIDE OF THE WATERBODY.

(4) If the toe and the crest of a moderate (15% to <25%) slope and the adjoining backslope are located within the 175-foot cross-section, the waterbody buffer will extend to the crest of the moderate (15% to <25%) slope, or 100 feet, whichever is greater, FOR THAT SIDE OF THE WATERBODY.

(5) Except as provided in subsections (6) or (7) below, if 60% or more of the 175-foot cross-section includes steep (25% or greater) slopes, then the waterbody buffer shall be increased to 175 feet, FOR THAT SIDE OF THE WATERBODY.

(6) WITHIN THE LINGANORE WATERSHED PROTECTION AREA ONLY, if the 175-foot cross-section includes a steep (25% or greater) slope and the steep slope extends beyond 175 feet, the waterbody buffer shall be extended to include the entire steep slope area FOR THAT SIDE OF THE WATERBODY.

(7) If the toe and the crest of a steep (25% or greater) slope and the adjoining backslope are located within the 175-foot cross section, the waterbody buffer will extend to the crest of the steep slope, or 100 feet, whichever is greater, FOR THAT SIDE OF THE WATERBODY.

(8) Waterbody buffer widths may be greater than those provided herein if floodplain and wetlands extend beyond the waterbody buffer area.

~~(C)~~(D) No buildings, structures, or impervious surfaces, and no activities requiring clearing or grading over 5,000 square feet will be permitted in waterbody buffers, except for utilities, public and private roads, driveways, bikeways, and trails. which UTILITIES, PUBLIC AND PRIVATE ROADS, AND DRIVEWAYS MUST meet the requirements of subsection

(~~DF~~) below or qualify for the exemption in subsection (~~EG~~) below IN ORDER TO BE LOCATED WITHIN THE WATERBODY BUFFER.

(E) SEWAGE DISPOSAL SYSTEMS, INCLUDING BUT NOT LIMITED TO, SEPTIC TANKS AND THEIR ASSOCIATED PIPING, DRAINFIELDS, SEPTIC RESERVE AREAS OR SAND MOUND SYSTEMS, RECEIVING APPROVAL AFTER AUGUST 15, 2008 SHALL BE LOCATED OUTSIDE THE WATERBODY BUFFER AREA. IF FREDERICK COUNTY HEALTH DEPARTMENT-ADMINISTERED PERCOLATION TESTS OUTSIDE THE WATERBODY BUFFER FAIL AND THE APPLICANT CAN DEMONSTRATE THAT AN ALTERNATIVE LOCATION OUTSIDE THE WATERBODY BUFFER IS NOT FEASIBLE, THE FREDERICK COUNTY HEALTH DEPARTMENT MAY APPROVE A SEWAGE DISPOSAL SYSTEM WITHIN THE WATERBODY BUFFER AREA PROVIDED ALL CODE OF MARYLAND REGULATIONS ARE MET.

(~~D~~)(F) (1) Public and private roads, driveways, AND utilities, ~~bikeways or trails~~ may be permitted in the waterbody buffer only if the applicant has clearly demonstrated that no feasible alternative exists, and that every reasonable effort has been made to locate the public and private roads, driveways, AND utilities, ~~bikeways or trails~~ outside of the buffer area.

(2) In order to locate public and private roads, driveways, OR utilities, ~~bikeways or trails~~ in the waterbody buffer, the applicant must submit a justification statement to the appropriate county agency or division, including: (a) an evaluation of at least one alternative location for the requested public and private roads, driveways, AND utilities, ~~bikeways or trails~~; and (b) the reasons why the alternative location or locations are not feasible.

(3) Public and private roads, driveways, AND utilities, ~~bikeways and trails~~ that are allowed in the buffer area must be located to create the least disturbance to existing vegetation, grade, and wetlands.

(4) Where feasible, utility easements SHALL ~~should~~ be set back a minimum of 50 feet from all waterbodies or outside wetlands and their buffers, whichever is greater.

(5) Utility, bikeway or trail easements or rights-of-way within the waterbody buffer SHALL ~~should~~ be co-located whenever possible.

(~~E~~)(G) Upgrades, maintenance or repair of existing public and private roads, driveways, utilities, bikeways and trails shall be exempt from the requirements of subsection (~~DF~~) above.

(~~F~~)(H) Sediment and erosion control structures or facilities may be allowed as a temporary use in the waterbody buffers if Soil Conservation District (SCD) staff or Natural Resources Conservation Service (NRCS) staff certifies in writing that performance of the overall site sediment control system will be measurably improved by placement of a facility at that location. At a minimum, grading must be at least 25 feet from the bank of the waterbody and from any wetlands.

~~(G)~~(I) Stormwater Management (SWM) facilities or structures and appurtenant conveyances (collectively hereinafter referred to as a "SWM Control System") within the waterbody buffer area may be approved by the appropriate county agency or division. In order to obtain this approval, the applicant must submit a written request, including a justification statement discussing each of the following factors:

(1) Documented and measurable improvement in the effectiveness of the SWM Control System if placed in the buffer.

(2) Minimization of encroachment into the buffer.

(3) Avoidance of existing sensitive areas (wetlands and their buffers, floodplains and their buffers, steep (25% or greater) slopes, and habitat for rare, threatened, and endangered species).

(4) Whether excessive grading will result from an uphill SWM location; and whether the proposed SWM Control System(s) will allow for the reduction of numerous smaller and less efficient SWM Control Systems outside the buffer.

(5) Whether severely degraded conditions within the buffer area exist that could be improved if the SWM facility or structure is located within the buffer area.

(6) The presence of man-made structures (e.g., farm ponds) in the buffer area under pre-development conditions that can be converted to SWM use without excessive waterbody disturbance.

~~(H)~~(J) Deposition or stockpiling of any material, including excavated rock, topsoil, stumps, shrubs, or any building or construction material, within the designated waterbody buffer is prohibited. However, stockpiling which is necessary to restore an area within a utility easement or temporary sediment control area may be approved by the appropriate county agency or division on a temporary basis.

AND BE IT FURTHER ENACTED AND ORDAINED THAT this Ordinance shall apply to applications for subdivision or resubdivision filed on or after the effective date of this Ordinance. This Ordinance shall also apply retroactively to any subdivision or resubdivision application filed prior to, but not formally approved by Staff or the Planning Commission as of, the effective date of this text amendment.

AND BE IT FURTHER ENACTED AND ORDAINED THAT the following explanatory comment shall be published in the Frederick County Code at the end of Section 1-19-333:

Comment: This Section shall apply to applications for subdivision or resubdivision filed on or after August 15, 2008, and shall also apply retroactively to any subdivision or resubdivision application filed prior to, but not formally approved by Staff or the Planning Commission as of, August 15, 2008. This Section shall not apply to: addition plats; correction plats; outlot plats; revisions to previously approved subdivision plats that do not change the number of lots; extensions or re-approvals of previously approved subdivision plats that have not expired; and submission of final plats for recordation, provided that the final plat is consistent with the approved preliminary subdivision plat.

The effective date of this Ordinance shall be August 15, 2008. A fair summary of this Ordinance shall be published in the *Frederick News Post*, and a copy shall be filed with the Clerk of the Circuit Court for Frederick County, Maryland.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 5TH day of August, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Ronald A. Hart, County Manager

By: 

Jan H. Gardner, President

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8/12/08